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ORDER 2001-10-2



**UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.**

Issued by the Department of Transportation
on the 12th day of October, 2001

AIRLINE INDUSTRY CONDITIONS

Docket OST-2001-10709 — 2

Served: October 15, 2001

ORDER

By Order 2001-9-18 (September 28, 2001), we required thirty-five airlines to provide us specified types of reports prepared since September 11, 2001. The airlines subject to our directive included the fourteen major airlines, the twelve national airlines, eight commuter airlines, and one all-cargo airline certificated under section 418. Order 2001-9-18, Attachment A. We required the reports so that we could monitor industry developments and use our authority as appropriate to alleviate recent industry problems, to provide advice and analysis to Congress, and to implement legislation enacted by Congress. These tasks require us to obtain information from the airlines that will enable us to remain informed of industry developments. Our need to obtain the information stemmed from the tragic events of September 11 and their aftermath, including Congress' enactment of legislation, the Air Transportation Safety and System Stabilization Act, P.L. 107-42 (September 22, 2001), that provides financial assistance to airlines to offset losses caused by these circumstances. To limit the airlines' burden, we required each airline to submit only reports already being prepared by the airline.

Several airlines have requested additional assurances that the reports submitted by them would not be disclosed to any outside party. We also learned that at least some airlines misunderstood the scope and purpose of the reporting requirement. After considering these matters and reviewing our original requirements, we have determined to clarify the scope of the requirements so that we can best obtain the information that enables us to accurately monitor industry developments while not creating an undue burden on the airlines. We will also revise the schedule for reports to eliminate any need for daily filings by any airline. We are giving the airlines additional assurances that we will use our best efforts to protect the confidentiality of all sensitive business information submitted by them.

Attachment B to Order 2001-9-18 listed the kinds of reports whose submission was being required. We have modified the list of required reports, and the list as revised is set forth in Attachment B to this order. The airlines required to submit the reports consist of the airlines listed in Attachment A to Order 2001-9-18.

As we stated in our original order, we are requiring each airline to submit only reports that would be prepared anyway. We are not now requiring airlines to prepare reports or other documents that would not otherwise be prepared.

We will also allow airlines to redact information from a report to excise information that is unrelated to the categories of information on which we are requesting reports.

We are revising the timetable for the submission of the reports. We are requiring each airline to submit the reports required by this order once each week. Each airline may choose which day of the week it will make its submissions. Each weekly filing shall include all reports not previously submitted to us that were prepared at least forty-eight hours before the filing is made. This will give each airline at least two days to review reports to see whether they are included within those whose filing is required by this order.

The reporting requirements imposed by this order shall terminate on December 31, 2001, unless an extension of the requirement appears necessary.

No airline will be required to retain copies of the reports required by this order beyond December 31, 2001 (the reports prepared for airline officials listed on Attachment B). If an airline creates a special report, it shall keep the underlying primary material until further notice.

We noted in our order that the airlines required to submit the reports might consider at least some of their responses to this order to be sensitive for competitive reasons and may ask us to keep them confidential. We stated that any request for confidential treatment must follow the procedures set forth by our rule, 14 C.F.R. 302.12, and that we will rule on the request before allowing any person (other than persons from interested Federal agencies or Congress) to see the material covered by a request for confidential treatment.

We recognize that much of the information that we have directed the airlines to file involves confidential business information. We have, for example, asked for reports on cash flow information, advance bookings, load factors, and passenger yield information. We assume, therefore, that much of the information contained in the reports will be confidential, privileged, and proprietary information whose release to the public would cause the submitting airline substantial competitive harm and which is not customarily disclosed to the public. We intend to withhold such confidential information from release under the Freedom of Information Act. We will in any event give the airline notice if any person seeks release of any reports submitted by that airline and an additional opportunity to state its reasons for objecting to any release of those reports.

As we see it, two other exemptions from the usual disclosure requirements of the Freedom of Information Act are applicable here, exemptions 3 and 4, 5 U.S.C. 552(b)(3), (4). Exemption 3 exempts from disclosure information whose withholding is authorized or required by another federal statute. Two such federal statutes are applicable here. The first is 49 U.S.C. 46311, which prohibits release of information from air carrier records.

This statute applies here because we have asked for information from air carrier records. The second is 49 U.S.C. 40115, which protects information whose disclosure would harm either the competitive position of U.S. airlines engaged in foreign air transportation or the development and implementation of the U.S. position in international aviation negotiations. This statute applies because many of the airlines subject to this order are engaged in foreign air transportation while we are not obtaining information from foreign airlines.

Some of the airlines have asked for additional assurances that the reports would be given confidential treatment. We are providing such assurances to the greatest extent possible and, to that end, are simplifying the procedures for requesting confidential information. A request for confidential treatment under our Rule 12 (formerly Rule 39), 14 C.F.R. 302.12, will aid us in both identifying sensitive information and protecting it. See 18 U.S.C. 1905.

We will use the reports submitted pursuant to this order to enable us to assess the airline industry's recovery from the impact of the September 11 terrorist attacks, to enable us to keep abreast of developments in the airline industry during the next three months and to respond to requests from the Administration and Congress on the condition of the airline industry, and to help us implement the provisions of the Air Transportation Safety and System Stabilization Act, P.L. 107-42 (September 22, 2001). Our determination that the reports will not be used in any public proceeding makes any release of the confidential information additionally unlikely. There will be no proceeding involving parties who might need to obtain access to the confidential information (albeit on a restricted basis) in order to present their position on the issues in the case.

As discussed above, airlines will be submitting reports to us several times each month during the effective period of Order 2001-9-18. An airline may file one motion for confidential treatment covering all of the material submitted pursuant to this order rather than file a separate motion for each separate weekly submission, but the original motion should list all of the categories of reports which the airline is expecting to file pursuant to that order and explain why each category of report is entitled to confidential treatment.

Pursuant to the airlines' request, we agree that we will destroy all reports filed pursuant to this order by December 31, 2002.

ACCORDINGLY, pursuant to 49 U.S.C. 40113 and 41708, the Department finds it necessary to compel the submission of certain reports and to take action, as follows:

1. Each of the airlines listed on Attachment A shall submit to the address in Attachment B a copy of each report described on Attachment B prepared after September 11, 2001, within three business days of the issuance of this order, for all reports prepared by the date of this order, and shall submit each week any future reports; each such weekly submission shall include all reports not previously submitted that were delivered to an airline official listed in Attachment B at least two business days before that submission;

2. If any of the responding carriers object to the public release of any of the information submitted pursuant to this Order, they shall comply with the requirements of 14 CFR 302.12, provided that an airline may file one motion requesting confidential treatment for all reports submitted pursuant to this order;
3. The reporting requirements imposed by this order shall terminate on December 31, 2001, unless extended by a later Department order.
4. Air carriers need not retain the reports covered by this order and the books, records, and other source and summary documentation supporting the reports, beyond December 31, 2001; and
5. We will serve this order on all carriers listed in Attachment A.

By:

READ VAN DE WATER
Assistant Secretary for Aviation
and International Affairs

(SEAL)

*An electronic version of this document is available on the World Wide Web at:
<http://dms.dot.gov/search>*

ATTACHMENT A

Airlines listed in this attachment and their owned affiliates (for example, Delta Express, ASA, and Comair for Delta) are required to provide reports set forth in Attachment B of this order.

MAJOR

Alaska Airlines, Inc.
America West Airlines, Inc.
American Airlines, Inc., American Eagle
American Trans Air, Inc.
Continental Air Lines, Inc.
Delta Air Lines, Inc.
DHL Airways
Federal Express Corporation
Northwest Airlines, Inc.
Southwest Airlines, Co.
Trans World Airways, LLC.
United Air Lines, Inc.
United Parcel Service
US Airways

COMMUTER/SMALL CERTIFICATED

Atlantic Coast Airlines/Atlantic Coast Jet, Inc.
Big Sky Airlines, Inc.
Chautauqua Airlines, Inc.
Colgan Air, Inc.
Commutair
Great Lakes Aviation
Mesa Airlines
Sky West Airlines, Inc.

SECTION 418

Airborne Express, Inc.

NATIONAL

AirTran Airways Corp.
Aloha Airlines, Inc.
Frontier Airlines
Hawaiian Airlines, Inc.
JetBlue Airways
Mesaba Airlines
Midwest Express Airlines
National Airlines
Spirit Air Lines
Sun Country Airlines
Trans States Airlines
Vanguard Airlines

ATTACHMENT B

SUPPLEMENTAL INFORMATION FROM U.S. AIRLINES REQUIRED TO MONITOR INDUSTRY DEVELOPMENTS & RECOVERY

The reports required by this order consist of any routine report already being prepared by an airline listed on Attachment A to Order 2001-9-18 that covers any of the issues listed below and that was or will be prepared after September 11, 2001, for the airline's Board of Directors, Chairman of the Board, Chief Executive Officer, Chief Financial Officer, Chief Operating Officer, or Chief Marketing Officer, or equivalent official. If more than one report includes the same information, the airline should submit the report which has the most complete and accurate information.

Each report should identify the time-period covered by the report and the airline entities included in the report (e.g., mainline, shuttle, express commuter, and low-cost subsidiary). Airlines that have separate subsidiaries or operating units (for example, Delta Express, ASA, and Comair for Delta) shall submit reports being prepared on any of the listed issues for that subsidiary's or unit's Board of Directors, Chairman of the Board, Chief Executive Officer, Chief Financial Officer, Chief Operating Officer, or Chief Marketing Officer, or equivalent official.

Airlines may submit the reports either by E-mail (preferably Microsoft Word or Excel) or by sending hard copies to the address listed below. Each airline shall designate an individual *at its corporate headquarters* responsible for the submission of these documents who shall serve as our point of contact.

The Department is requiring reports which discuss the issues listed below on a systemwide basis, on the basis of operating entities (e.g., mainline, commuter express, shuttle), geographic region, or major hub or station. Except for reports on schedule changes and service deletions, the Department is not requiring reports that set forth data on the basis of individual city-pairs or routes.

This list is being provided in sufficient detail to illustrate the types of issues within the broad categories that are of primary interest to the Department. The list is meant to be illustrative and to clarify the Department's information needs.

An airline may redact information from the reports required by this order to the extent that the material does not discuss any of the issues listed below.

The Department specifically requires copies (printed or electronic) of routine reports already being prepared by the airlines which address any of the following issues:

PASSENGER AIRLINES

Financial Data & Analysis

(including year/year, week/week and/or similar relevant benchmarks)

- status of available credit lines
- changes in outstanding financing (e.g., new debt, plans to sell debt, defaults, and lender refusals to renew)
- cash flow statements, including number of days cash coverage of cash operating expense

- operating revenues/expenses/profit(losses)/net income
- changes in existing relationships between commuter carriers and their mainline affiliates (including service changes) since September 11, 2001
- changes in aircraft (e.g., sales, lease terminations, deliveries, acceptance of newly-purchased or leased aircraft, and delivery deferrals)

Operations Data & Analysis

(including year/year, week/week and/or similar relevant benchmarks)

- operating performance summary statistics by airline entity
- schedule and equipment changes (ongoing comparison) identifying network ramp-up and coverage, route-specific reductions and cancellations, and termination of service to cities/airports
- completion factors, (e.g., ASMs scheduled/completed, departures scheduled/completed)
- aircraft utilization
- employee headcounts and furloughs by functional area (e.g., pilots, flight attendants, maintenance, airport and check-in staff, etc.)
- load factors and break-even load factors systemwide and by airline entity, geographic region, and/or network segment

Traffic and Fare Data & Analysis

(including year/year, week/week and/or similar relevant benchmarks)

- origin and destination passenger counts/enplanements by airline entity, geographic region and/or network segment
- ASMs and RPMs by airline entity and geographic region
- passenger fare and yield information and trends by stage length, by hub, by region, by airline entity, etc.

Bookings & Cancellations Data & Analysis

(including year/year, week/week and/or similar relevant benchmarks)

- bookings systemwide and by domestic and international geographic regions by leisure and business
- booking volume by week, systemwide and region to region breakdowns
- changes in booking windows (*i.e.*, days before the flight event that bookings are made)
- cancellations systemwide and by domestic and international geographic regions, by leisure and business
- changes in cancellation windows (*i.e.*, days before the flight event that cancellations are being received)

CARGO AIRLINES

(including year/year, week/week and/or similar relevant benchmarks)

- revenue ton miles and available ton miles
- cargo load factor
- cargo yield
- package volumes
- package yields
- operating revenues/expenses/profit(losses)/net income, by airline entity
- balance sheet changes and cash flow statements, including number of days cash coverage of cash operating expense
- changes in employment

Reports should be submitted as quickly as completed to:

Mr. Randall Bennett

Director

Office of Aviation Analysis, X-50

U.S. Department of Transportation

400 Seventh Street SW, Room 6401

Washington, DC 20590

Tel: (202) 366-1053

Fax: (202) 366-7638

E-mail: x10info@ost.dot.gov